

CHRISTINE H. LONG, CA STATE BAR NO. 199676
KARA L. ARGUELLO, CA STATE BAR NO. 221093
BERLINER COHEN, LLP
TEN ALMADEN BOULEVARD
ELEVENTH FLOOR
SAN JOSE, CALIFORNIA 95113-2233
TELEPHONE: (408) 286-5800
FACSIMILE: (408) 998-5388
christine.long@berliner.com
kara.arguello@berliner.com

ATTORNEYS FOR DEFENDANTS BOBBY A. ALI; RICK
ALI¹; M1 COLLISION CARE CENTERS, INC.²; AUTOVEST
COLLISION REPAIRS, INC., DBA AUTOWEST COLLISION
REPAIRS, INC.; AND AW COLLISION OF SERRAMONTE³

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

RAFAEL SANDOVAL, LUIS MARTIN
CALIXTO, and ADRIAN RAMIREZ on
behalf of themselves, on behalf of all others
similarly situated and in the interest of the
general public,

Plaintiffs,

v.

BOBBY A. ALI; RICK ALI, M1 AUTO
COLLISIONS CENTERS, INC.; M1
COLLISION CARE CENTERS, INC.;
AUTOVEST COLLISION REPAIRS, INC.
aka AUTOWEST COLLISION REPAIRS,
INC.; and SERRAMONTE AUTO PLAZA
BODY SHOP, INC.,

Defendants.

CASE NO. CV 13-03230 EDL

DECLARATION OF CHRISTINE H. LONG
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION AND
APPOINTMENT OF CLASS COUNSEL

Date: July 21, 2015
Time: 9:00 a.m.
Dept.: Courtroom E, 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Judge: Hon. Elizabeth D. Laporte

///

///

///

¹ Defendants Bobby Ali and Rick Ali were dismissed with prejudice from this action by the Court's Order of 7/10/2014.

² Erroneously sued as "M1 Auto Collisions Centers, Inc."

³ Erroneously sued as "Serramonte Auto Plaza Body Shop, Inc."

1 I, Christine H. Long, declare as follows:

2 1. I am an attorney licensed to practice law in California and am admitted to practice
3 before this court. I am a partner in the firm of Berliner Cohen, LLP in San Jose, California. I am
4 counsel of record for Defendants. I was also counsel for Defendants in the action of *Juarez et. al. v.*
5 *Ali, et al.* Santa Clara County Superior Court, Case No. 1-08-CV-121859 (“*Juarez Action*”).

6 2. I submit this declaration in support of Defendants’ Opposition to Plaintiffs’ Motion
7 for Class Certification and Appointment of Counsel. The information is true and correct to the best
8 of my personal knowledge or, if stated upon information and believe, I am informed and believe it to
9 be true.

10 3. I have divided the declaration into four sections as noted:

11 A. The first section consists of evidence obtained in this pending action.

12 B. The second section relates to testimony and evidence obtained in the *Juarez*
13 *Action*.

14 C. The third section is summaries of voluminous evidence in support of the
15 objections to evidence in support of Plaintiffs Motion for Class Certification. The
16 summaries comply with FRE 1006, as outlined below.

17 D. The fourth section is material relating to objections to the claims made by Mr.
18 Mallison in his declaration and cited in support of the motion for class
19 certification regarding “Research Models”.

20 The separation was separated as noted above to aid the court given the long history of this
21 case. Furthermore, evidence relating to the history of the case can be found in the jointly filed
22 Request for Judicial Notice.

23 **A. Evidence in this Matter**

24 4. Attached hereto as **Exhibit 1** are true and correct copies of exemplars of the piece rate
25 sheets given to employees each week. The foundation for these documents is contained both within
26 the individual employees’ deposition testimonies (**Exhibits 4-18**) as well as the deposition testimony
27 of Emily Nguyen (**Exhibit 18**), former controller of Defendant entities. I have attached a few
28

1 exemplars here for ease of reference of the Court, but they can also be found in the relevant portions
2 of each deponents testimony.

3 5. Attached hereto as **Exhibit 2** are exemplars of the time clock sheets that employees
4 were asked to sign and acknowledge each and every week. Plaintiffs have requested judicial notice
5 of Defendants time clock policy in the Declaration of Marco Palau, Docket No. 75-2, at Pg. 111. The
6 attached sheets directly contradict the testimony of Plaintiffs in which they assert there was no time
7 clock or it was broken. Exhibit 2 demonstrates that there were both computer and handwritten
8 records, and the employees were asked to acknowledge each. The foundation for the exhibits
9 contained herein is found in each deponents' deposition (**Exhibits 4-18**). They are provided here
10 again for ease of reference for the court and are mere exemplars of a series of voluminous records.
11 Some of the plaintiffs worked for over 10 years with defendant entities, and their time clock records
12 along would number over 500 pages per individual. The exemplars are also attached to the
13 declaration of Alex Astts, Director of Operations, who confirmed that these documents were
14 maintained in the ordinary course of business and include:

- 15 a. Exhibit 2a – True and correct copies of Martin Calixto's time records demonstrating
16 the audit that was done, and employees signed off acknowledging that their flag
17 hours compensated them for all hours worked.
- 18 b. Exhibit 2b - True and correct copies of electronic time records of Rafael Sandoval
19 presented to employees each week to sign and affirm that the hours were correct. The
20 court will note that page 29 of 42 demonstrates working days in excess of 8 hours on
21 two occasions, despite testimony that employees had to sign affirming they only
22 worked 8 hours a day.
- 23 c. Exhibit 2c – True and correct copies of electronic time records of Adrian Ramirez
24 showing a wide variance in hours worked.
- 25 d. Exhibit 2d – True and correct copies of handwritten and electronic time records of
26 Francisco Lopez Sr.
- 27 e. Exhibit 2e - True and correct copies of electronic time records of Jamie Barrios.

1 f. Exhibit 2f - True and correct copies of electronic time records of Manual "Raul"
2 Llamas. The excerpts demonstrate that while true he had 40 hour work weeks as he
3 testified, he also certified time cards showing work weeks that were greater than 40
4 hours, contradicting his assertion that he was forced to admit to working no more
5 than 40 hours.

6 g. Exhibit 2g – True and correct copies of handwritten group employee time cards
7 showing the working hours of the employees on given dates.

8 6. Attached hereto as **Exhibit 3** are true and correct copies of the work orders given to
9 employees. The foundation for this work order is found in the deposition of Francisco Lopez, Sr. at
10 Exhibit 15, which exhibit is attached at **Exhibit 10**. A copy is attached hereto as Exhibit 3 for ease of
11 reference for the Court.

12 7. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the
13 Deposition of Plaintiff Luis Martin Calixto, taken on May 14, 2015.

14 8. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from the
15 Deposition of Plaintiff Adrian Ramirez, taken on May 15, 2015.

16 9. Attached hereto as **Exhibit 6** is a true and correct copy of excerpts from the
17 Deposition of Plaintiff Rafael Sandoval, taken on May 4, 2015.

18 10. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the
19 Deposition of Jamie Barrios, taken on May 21, 2015.

20 11. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the
21 Deposition of Salvador Flores, Sr., taken on May 7, 2015.

22 12. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the
23 Deposition of Manual Llamas, taken on May 13, 2015.

24 13. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the
25 Deposition of Francisco Lopez, Sr., taken on May 13, 2015.

26 14. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the
27 Deposition of Francisco Javier Lopez, Jr., taken on May 14, 2015.
28

1 15. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the
2 Deposition of Eddy Sifuentes, taken on May 15, 2015.

3 16. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the
4 Deposition of Alex Assts, Person Most Qualified for Autovest Collision Repairs, Inc., taken on April
5 14, 2015.

6 17. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the
7 Deposition of Alex Assts, Person Most Qualified for M1 Collision Care Centers, Inc., taken on April
8 15, 2015.

9 18. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the
10 Deposition of Alex Assts, Person Most Qualified for Serramonte Auto Plaza Body Shop, Inc.⁴,
11 Volume I taken on April 14, 2015.

12 19. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the
13 Deposition of Alex Assts, Person Most Qualified for Serramonte Auto Plaza Body Shop, Inc.,
14 Volume II taken on April 15, 2015.

15 20. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the
16 Deposition of Alex Assts, individual capacity, taken on May 19, 2015.

17 21. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the
18 Deposition of Emily Nguyen, taken on May 22, 2015

19 **B. Exhibits from Juarez Action**

20 22. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the Trial
21 Testimony of Emily Nguyen in the matter of Juarez v. MB Body Shop, Case No. 1-08-CV-121859,
22 taken on September 10-11, 2013.

23 23. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the Trial
24 Testimony of Eddy Sifuentes in the matter of Juarez v. MB Body Shop, Case No. 1-08-CV-121859,
25 taken on August 28-29 and September 4, 2013.

26
27 ⁴ The deposition transcript for the person most knowledgeable at AW Collision of Serramonte was erroneously
28 noticed (and later titled based on said notice) as the deposition of the person most knowledgeable for Serramonte
Auto Plaza Body Shop, Inc. Counsel for Defendants would like to stress that this is a fabricated name and the
inclusion of said name in this suit continues to be improper and a source of confusion.

24. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the Trial Testimony of Adrian Ramirez in the matter of Juarez v. MB Body Shop, Case No. 1-08-CV-121859, taken on September 4-5, 2013.

25. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from the Trial Testimony of Hugo Gonzalez in the matter of Juarez v. MB Body Shop, Case No. 1-08-CV-121859, taken on September 5 and 10, 2013.

26. Attached hereto as **Exhibit 23** is a true and correct copy of the Declaration of Luis Martin Calixto filed in the Juarez Matter, Case No. 1-08-CV-121859, in Support of Plaintiffs' Motion for Class Certification, dated January 15, 2012.

27. Attached hereto as **Exhibit 24** is a true and correct copy of the Declaration of Rich Albright filed in the Juarez Matter, Case No. 1-08-CV-121859, dated January 23, 2012.

28. Attached hereto as **Exhibit 25** is a true and correct copy of the Declaration of Wayne Krause filed in the Juarez Matter, Case No. 1-08-CV-121859, dated January 25, 2012.

29. Attached hereto as **Exhibit 26** is a true and correct copy of Wayne Krause's trial testimony in the Juarez Matter, Case No. 1-08-CV-121859, dated September 17, 2013.

30. Attached hereto as **Exhibit 27** is a true and correct copy of the Declaration of Emily Nguyen filed in the Juarez Matter, Case No. 1-08-CV-121859, in Support of Opposition to Motion for Order Certifying the Class, dated January 25, 2012.

C. Evidence in Support of Objections to Declarations

31. As noted above, in the opposition, Defendants have objected to the boilerplate declarations submitted by Plaintiffs' counsel on the grounds that they are conclusory and that the testimony is inconsistent with the witnesses sworn deposition testimony.

32. The record demonstrates that while the declarations prepared by Plaintiffs' counsel assert that employees worked "off-the-clock" outside working hours or that there was not time clock, at deposition deponents acknowledge the time clock, confirmed they were never told to work off the clock, and that each was presented with time clock records to confirm their working hours.

33. I have attached hereto as **Exhibit 28**, with subparts, charts that summarize the inconsistent testimony and the conclusory testimony that is inadmissible under FRE 801 and 403. The subparts are as follows:

- a. **Exhibit 28A**, Summary for Rafael Sandoval
- b. **Exhibit 28B**, Summary for Luis Martin Calixto
- c. **Exhibit 28C**, Summary for Adrian Ramirez
- d. **Exhibit 28D**, Summary for Salvador Flores
- e. **Exhibit 28E**, Summary for Manual Llamas (“Raul”)
- f. **Exhibit 28F**, Summary for Francisco Javier Lopez Sr.
- g. **Exhibit 28G**, Summary for Francisco Javier Lopez Jr.

34. The attached exhibits meet the standards of Under FRE 1006, in that each summarizes voluminous deposition and witness testimony, the chart is an accurate compilation of the voluminous records; the evidence sought to be introduced is admissible hearsay, as it is a party’s statements under oath offered for the truth of the matter, and the underlying documents are elsewhere attached to this declaration. I believe that the attached summaries will aid the court in ruling on the objections made in the motion.

35. There were many objections that could have been made to the form of the declarations, including the fact that no witness indicates that the declarations were translated for them, yet all but one required an interpreter for their deposition. However the above summaries of objections demonstrate what I believe to be the most objectionable grounds for the evidence, namely that what counsel prepared and put before the witness contradicts the testimony they gave of their own accord at deposition.

D. Evidence in Support of Mallison’s “Research Model”

36. The declaration of Plaintiffs’ attorney Stan Mallison unequivocally states that Plaintiffs seek to rely on a “‘research model’ approach to wage and hour class action litigation.” Mallison Dec. ¶ 5. Mallison contends that the “success of this model [has been] exemplified” in approximately eighteen cases he has been involved in (Mallison Dec., ¶6)

37. After reading Mr. Mallison's declaration I was surprised that he would have had such success with the model in light of *Duran v. U.S. Bank Nat'l Assn*, 203 Cal.App.4th 212 (2012), *rehg* denied, 2012 Cal. App. LEXIS 265 (Cal. App. 1st Dist. Mar. 6, 2012). Therefore, I conducted a review of the cases he cited to determine which had been submitted for class certification, and in which the proposed model had been utilized to determine if the courts were truly in agreement as he stated under oath.

38. The results were telling that the statements made by Mr. Mallison were definitely designed to mislead. First, he omits that all of the cases he cited pre-date *Duran v. U.S. Bank Nat'l Assn*, 203 Cal.App.4th 212 (2012), rhg denied, 2012 Cal. App. LEXIS 265 (Cal. App. 1st Dist. Mar. 6, 2012).

39. Further, he omitted that at least twelve of the cases were resolved prior to a motion for class certification being filed. I say at least twelve because two of the counties dockets are not available online, so I was unable to confirm in two of the 18 instances whether a motion for certification was filed, but certainly in 12 instances it was not, or in more than half the instances.

40. I was unable to find a single case of Mr. Mallison's in which the model proposed here had been approved or adopted by any court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of June, 2015 in San Jose, California.

BERLINER COHEN, LLP

BY: /s/Christine H. Long
CHRISTINE H. LONG